

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4002 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JALAMSINH BABUSINH THAKOR

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 4002 of 1998
MR MUKESH H RATHOD for Petitioner
MR JAYESH BAROT for MR HS MUNSHAW for Respondent
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 05/03/2004

ORAL JUDGEMENT

The petitioner, a former employee of the respondent has filed this petition under Article 227 of the Constitution of India challenging the judgment and

award made by the Special Labour Court, Ahmedabad, dated 20th January, 1998 in Reference (L.C.I.D.A.T.) No. 363 of 1997. Vide the said judgment and award, the petitioner's reference has been dismissed.

1.1. The petitioner was working as a conductor at Sanand Depot for almost seven years prior to date of the incident i.e. 8th August, 1990. On that date he was discharging duty in the bus that was being plied between Ahmedabad and Nathdwara. At Udaipur, surprise checking was made by the squad and it was found that the petitioner had deliberately not issued the ticket to one passenger and not collected the fare from him. It was also found that though he had collected Rs.300=00, towards the bus fare at the rate of Rs.12=50 per ticket, from 24 passengers, tickets were not issued to them. He was, therefore, interrogated for seeking his explanation. It appears that even at that time, he had behaved rudely with his superior officer and the checking inspector. In view of the aforesaid, he was served with the chargesheet dated 21st August, 1993. He submitted his reply to the same on 29th August, 1993. Thereafter, inquiry was held and it was found that the charges levelled against the petitioner were adequately proved by the department. He was, therefore, served with the notice dated 2nd February, 1994, by the disciplinary authority calling upon him to showcause why his service should not be terminated. He replied the same on 7th April, 1994. The disciplinary authority vide order dated 14th October, 1994 dismissed the petitioner from service.

1.2. It appears that later on the petitioner raised dispute regarding his dismissal from the service since the respondent had declined to reinstate him. Since the efforts for conciliation did not materialize, the Labour Commissioner referred the matter for adjudication vide order dated 30th March, 1995.

1.3. At the hearing of the proceedings before the Labour Court, both the sides produced evidence to substantiate their respective versions. The petitioner filed statement of claim wherein, he had averred that allegation levelled against him was totally false. He had further averred that the passenger who had not been issued ticket was found to be at fault by the checking squad and he was penalized for the same, therefore he i.e. petitioner could not be held liable for it. It was further averred that if the checking squad had examined the cash lying with the petitioner, it would have found that no misappropriation was committed by the petitioner. It was further averred that he had been wrongly roped in

by the officers of the checking squad due to animosity and even he was manhandled after being taken to a deserted place in the forest. The respondent contested the claim by filing reply at Exh. 8 and in the written statement it was averred that the petitioner had committed Act of misappropriation by not issuing ticket to 24 passengers from whom total fare of Rs.300=00 was already collected. There were several other contentions raised by both the side in the statement of claim as well as in written statement which have been adequately narrated in the judgment of the Labour Court and hence they are not repeated here. As stated above, the respondent produced documentary evidence in the nature of report at Exh. 10, statement of tickets at Exh. 11, statement of passengers at Exh. 12 and several other documents.

1.4. At the end of the proceedings, the Labour Court came to the conclusion that the act of misconduct committed by the petitioner was duly proved and according to it, the same was of very serious nature. The Labour Court, therefore, concluded that the decision of the disciplinary authority terminating the service of the petitioner was just and proper and declined to interfere with the same by exercising power under Section 11 (A) of the Industrial Disputes Act, 1947. He, therefore, dismissed the Reference. It is this judgment which is now under challenge.

2. Mr. Mukesh Rathod learned advocate appearing for the petitioner has submitted that false allegations have been levelled against the petitioner and he had been made scape goat by his superior officers. He has further submitted that if way bill and the cash on hand of the petitioner were checked by the checking squad at the time of surprise checking, it would have revealed that no fare was collected by the petitioner. He has also submitted that considering the fact that the petitioner had rendered several years service, the punishment imposed upon him was very harsh. Lastly, he has submitted that the petitioner would be satisfied, if he is reinstated on his original post even without backwages and without continuity of service.

2.1. As against that Mr. Jayesh Barot for Mr. Munshaw learned advocate appearing for the respondent has submitted that this is a act of misappropriation of money which is to be looked upon very seriously and when the disciplinary authority has rightly exercised its discretion which is also confirmed by the Labour Court, no interference is called for under Article 227 of the

Constitution of India.

3. Having gone through the record of the petition as well as having carefully considered the rival submissions, it clearly appears that the petitioner had made some mischief while he was discharging his duty on the route between Ahmedabad and Nathdwara. There is concurrent finding of the Inquiry Officer as well as Labour Court to the effect that the petitioner had collected fare of Rs.300=00 at the rate of Rs.12=50 for each ticket and he had not issued tickets to about 24 passengers. It is also to be noted that the passengers had boarded from Kesariaji and he was required to collect fare from them and to issue tickets, but he had only collected the fare. When the bus had travelled around 70 Kms., checking was made at Udaipur. It also appears that the petitioner had not only behaved rudely and noncooperative manner, but had even threatened the superior officers with dire consequences. The petitioner, therefore, was chargesheeted. This is not the first offence of the petitioner. His default card shows that on previous occasions, he had committed five offences of different nature. In two cases, he had not issued tickets to the concerned passengers and he had not returned the balance amount to the owner thereof which had remained as balance after paying for the luggage fare by one passenger. Thus, it appears that the petitioner has been in the habit of committing acts of misappropriation. One can understand that a person committing sole default by siphoning out a small amount, but in the instant case, about 21 to 25 passengers were not issued tickets though the petitioner had collected money from them towards the fare of the bus, i.e. Rs.300=00. Thus, the petitioner's tendency to cause substantial monetary loss to the department is evident. Such misconduct cannot be viewed lightly. When the disciplinary authority and Labour Court had arrived at a concurrent finding with regard to the defalcation, under Article 227 of the Constitution of India, it is not possible for me to reappraise the entire material produced before the Labour Court and to come to a different conclusion. Here, the act is proved. There is no doubt it is serious one and hence it is to be dealt with strictly. In my opinion, the disciplinary authority was justified in passing the order of dismissal against the petitioner and the Labour Court has rightly dismissed the Reference holding the impugned order to be just and proper. This petition has, therefore, no merit and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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